No. 92-825

In the Supreme Court of the United States

OCTOBER TERM, 1992

ANTHONY T. LEE, ET AL., PETITIONERS

v.

TALLADEGA COUNTY BOARD OF EDUCATION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly found that prior desegregation orders were no longer enforceable against the respondent school district after the district court, pursuant to the parties' joint stipulation of dismissal, declared that the school system had achieved unitary status and dismissed the case.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-14a) is reported at 963 F.2d 1426. The memorandum opinion and order of the district court (Pet. App. 15a-19a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on June 15, 1992. A petition for rehearing was denied on August 13, 1992. Pet. App. 32a-33a. The petition for a writ of certiorari was filed on November 12, 1992. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. This school desegregation case derives from an action filed in federal district court in 1963 seeking to desegregate the public schools in Macon County, Alabama. The complaint in that action was subsequently amended to challenge dual school systems throughout the State and to seek statewide desegregation. Following extensive litigation, the district court concluded that a dual school system based on race was maintained and operated throughout the State. In 1967, the court ordered statewide desegregation and required specific school systems, including the Talladega County school system, to adopt desegregation plans that met the standards set forth in the court order. *Lee* v. *Macon County Bd. of Educ.*, 267 F. Supp. 458 (M.D. Ala.), aff'd, 389 U.S. 215 (1967). See Pet. App. 2a-3a.

In response to the 1967 desegregation order, the Talladega County Board of Education proposed a desegregation plan. After that plan proved ineffective, the board submitted a new plan that was approved as modified on February 3, 1970. Subsequent court orders in 1970 and 1971 modified the February 3, 1970, order. Pet. App. 3a.

2. On November 7, 1983, the Talladega County school board filed a "Motion for Court to Relinquish Jurisdiction," asserting that the school system had become unitary and asking the court to relinquish jurisdiction and control over it. The school board subsequently amended its motion by filing a resolution which it had adopted on November 22, 1983. See Pet. App. 26a-28a. The resolution stated that the school board had complied in good faith with all court orders and laws of the United States; the school

system was now unitary and has been for many years; no vestiges of racial segregation remained; and the school board had adopted the resolution "in support of its motion asking the Court to enter an order relinquishing jurisdiction and control over the operation of the Talladega County System." *Id.* at 26a. The resolution also stated that the school system "shall be operated at all times so as to conform with the United States Constitution, laws passed by Congress, and all previous orders of this Court." *Id.* at 27a.

On March 13, 1985, the district court approved a joint stipulation of dismissal, agreed to by all the parties. Pet. App. 23a-28a. The stipulation incorporated the school board resolution, and stated that "[i]t is agreed by all parties that [the orders entered in the case] have been implemented in a manner that is adequate for establishment of a unitary school system in Talladega County" and that "dismissal of this cause of action" is appropriate at this time. *Id.* at 24a. On the same date, the district court entered a judgment and order stating that the Talladega County school system had achieved unitary status, entering final judgment, and dismissing the case. *Id.* at 29a-31a.

3. On July 21, 1988—more than three years after the district court had dismissed the case—petitioners filed a motion to reopen the case, seeking an order directing the school board to comply with previous court orders. The motion to reopen alleged, in part, that the school board had engaged in a racially discriminatory pattern of closing schools in the black community, had implemented a transfer policy that allowed students to attend school out of their assigned

attendance zone, and had not implemented promised affirmative action plans for faculty and staff. Pet. App. 3a-4a.

Petitioners argued that the district court had jurisdiction to reopen the case and enforce the earlier injunctive decrees because the injunctions entered in the case had never been expressly vacated. They also argued that the school board had agreed (in the resolution) to abide by outstanding court orders, and that they were merely returning to court to enforce that agreement. Finally, petitioners argued that the case should be reopened pursuant to Fed. R. Civ. P. 60(b)(5) because "there 'ha[d] been a fundamental change in the legal predicates upon which [the] dismissal [wa]s based.'" Pet. App. 4a-5a. Petitioners asserted that the use of the term "unitary" or "unitariness" was not interpreted at the time of the stipulation and dismissal order to mean that the case was formally concluded. *Id.* at 5a.

The district court denied petitioners' motion to reopen the case. Pet. App. 15a-19a. The court found that it did not have jurisdiction to reopen the case because the case was formally dismissed and "in all respects concluded as to Talladega County Board of Education." *Id.* at 18a. The court stated that there were no "existing court orders" to enforce because in view of the dismissal "there was no retention of jurisdiction by this court and there remained no residual injunction requiring [the school board] to do or not to do anything." *Ibid.* The court also noted that the parties' predominant motive for obtaining the original dismissal order was their recognition that the litigation must eventually come to an end, and that "[t]he whole point of the dismissal * * * was

to require that any party who found the dismissal erroneous do something about it *then*." *Ibid.* The court concluded that petitioners could obtain the relief they sought only by filing a new lawsuit. *Id.* at 18a-19a.

4. The court of appeals affirmed. Pet. App. 1a-14a. The court rejected petitioners' contention that the previous district court orders remained enforceable against the school board even after dismissal of the case merely because they were never expressly vacated. Pet. App. 5a-8a. The court reasoned that the prior injunctive orders were implicitly dissolved when the district court declared that the school system had achieved unitary status. *Id.* at 8a. The court explained that "[t]his is so because the limited nature of a federal court's remedial powers as well as the fundamental limitations of federalism render continuing federal judicial supervision of local school authories incompatible with a finding of unitary status." *Id.* at 5a-6a (citing *Board of Educ. of Oklahoma City Pub. Schools* v. *Dowell*, 111 S. Ct. 630 (1991)). The court further noted that "[i]njunctive decrees in school desegregation cases were never intended to operate in perpetuity," and that when the "vestiges of * * * prior illegal racial discrimination have been eliminated to the extent practicable"—that is, when the school system has achieved "unitary status"—"the court should and must return control over the[] school system to the local school authorities." Pet. App. 6a-7a.[1]

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[1] The court of appeals also rejected petitioners' argument that the school board resolution created an obligation, enforceable against the school board, to continue to be bound by the previous court orders. Pet. App. 8a-13a. The court

ARGUMENT

Petitioners contend that this Court should grant certiorari to consider whether the court of appeals properly concluded that the district court's judgment and order dismissing the case dissolved the prior injunctive orders. The court of appeals' fact-bound decision, however, is a straightforward application of this Court's most recent school desegregation decisions, and does not conflict with any decisions of other courts of appeals. Accordingly, further review is not warranted.

1. Petitioners principally contend (Pet. 8-14) that the court of appeals erred in concluding that the district court "implicitly dissolved" its previous court orders when it found that the school system had achieved unitary status and dismissed the case. According to petitioners, that ruling was inconsistent with this Court's decisions in *Board of Educ. of Oklahoma City Pub. Schools* v. *Dowell*, 111 S. Ct. 630 (1991), and *Freeman* v. *Pitts*, 112 S. Ct. 1430 (1992), because it ignored this Court's rulings that the terms "unitary" and "unitary status" are not dispositive of whether desegregation decrees should be terminated, and that the parties are entitled to a "rather precise statement" from the court if such a decree is to be terminated or dissolved. Pet. 10-12 (citing *Dowell*, 111 S. Ct. at 636). This argument is unpersuasive, and misconstrues the decision below.

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stated that "[t]he sense of finality in the resolution is inconsistent with the notion that a party would enjoy the right to petition the court years later to enforce earlier court orders." *Id.* at 13a. In addition, the court rejected petitioners' argument that the district court abused its discretion in refusing to grant relief under Fed. R. Civ. P. 60(b)(5). Pet. App. 13a-14a.

In *Dowell*, the district court in 1977 issued an "Order Terminating Case," which stated that "substantial compliance with the constitutional requirements has been achieved," and that the school district was unitary. 111 S. Ct. at 633-634. The order also stated that "[j]urisdiction in this case is terminated," but did not expressly dissolve previous court orders. *Id.* at 634. That 1977 order was not appealed. *Ibid.*

In 1985, the plaintiffs filed a motion to reopen the case, contending that the school system had not achieved unitary status. The district court denied the motion, holding that in 1977 it had relinquished jurisdiction because the school system was unitary and that as of 1985 the school system remained unitary. 111 S. Ct. at 634.

The Tenth Circuit reversed and remanded, finding that the original desegregation injunction was still in effect. On remand, the district court concluded that the injunction should be dissolved and the school system returned to local control. 111 S. Ct. at 634-635. The Tenth Circuit again reversed, holding that dissolution of the desegregation order was inappropriate because the defendants had not shown a "grievous wrong evoked by new and unforeseen conditions." *Id.* at 635 (quoting *United States* v. *Swift & Co.*, 286 U.S. 106, 119 (1932)).

This Court reversed, but before doing so it approved the Tenth Circuit's previous ruling that the 1977 order declaring the school system to be "unitary" had not dissolved the desegregation decree. The Court concluded that since "[t]he District Court's 1977 order is unclear with respect to what it meant by unitary and the necessary result of that finding," the Court would decline to find that the 1977 order finally terminated the litigation. 111 S. Ct. at 636.

The Court explained that "it is a mistake to treat words such as 'dual' and 'unitary' as if they were actually found in the Constitution." *Ibid.* The Court added that "[i]n *Pasadena City Bd. of Education* v. *Spangler*, 427 U.S. 424 (1976), we held that a school board is entitled to a rather precise statement of its obligations under a desegregation decree. If such a decree is to be terminated or dissolved, [plaintiffs] as well as the school board are entitled to a like statement from the court." 111 S. Ct. at 636.

Petitioners assert (Pet. 9) that the facts in *Dowell* are "strikingly similar" to those in the instant case, and thus that the court of appeals improperly construed the district court's finding of "unitary status" to have dissolved the prior injunctive orders in the absence of an express statement to that effect. That contention is incorrect. First, whereas in *Dowell* the 1977 order relinquishing jurisdiction was unclear, in the instant case the district court's dismissal order was unambiguous. The order at issue in *Dowell* provided that the school board had "operated the Plan properly," had "slowly and painfully accomplished" a "unitary system," and was therefore "entitled to pursue in good faith its legitimate policies without the continuing constitutional supervision of this Court." 111 S. Ct. at 633-634. The order also stated, however, that the court did "not foresee that the termination of * * * jurisdiction will result in the dismantlement of the Plan or any affirmative action by the defendant to undermine the unitary system." *Ibid.* The latter statement suggests that the court did not intend the 1977 order to release the school system from the desegregation order, especially since the 1977 order came only five years after the desegregation plan had been implemented. It was in this con-

text that this Court stated that if a school desegregation decree is to be dissolved, the parties are entitled to a "rather precise statement." *Id.* at 636.

By contrast, in the instant case the joint stipulation of dismissal, entered 15 years after the desegregation plan had been ordered, stated that "[i]t is agreed by all parties that these orders [the court orders entered in the case] have been implemented in a manner that is adequate for establishment of a unitary school system" and that "dismissal of this cause of action * * * is appropriate." Pet. App. 23a-25a. The stipulation also notes that it follows the school board's "Motion for Court to Relinquish Jurisdiction." *Id.* at 23a-24a. Further, the district court's 1985 order states that the school system has achieved unitary status and that the case is dismissed. *Id.* at 30a. These statements are a "precise statement" that the stipulation and order "finally terminate[d]" the litigation (see 111 S. Ct. at 636): the court orders had been "implemented," the school system had achieved "unitary status," and the "cause of action" was "dismissed." As the court of appeals found, the district court in this case used the term "unitary status" to mean that the school board had " 'complied in good faith' with all court orders and that 'there is not . . . any vestige of racial discrimination remaining in the Talladega County System.' " Pet. App. 8a n.3.[2] Thus, this case presents none of the

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[2] Petitioners contend (Pet. 13 n.14) that the court of appeals misinterpreted the district court's use of the term "unitary status." Both courts below rejected petitioners' interpretation of the district court's dismissal order, however, and further review of this fact-bound question is not warranted.

ambiguity that led the Court in *Dowell* to conclude that the 1977 order "did not finally terminate the Oklahoma City school litigation." 111 S. Ct. at 636.

2. Moreover, petitioners' argument interprets *Dowell* to mean that as a matter of law a school board remains bound by previous court orders despite a proper finding that the school desegregation decree has been fully implemented and the school system is unitary, merely because the court did not expressly dissolve the orders. Such a conclusion would run sharply counter to the strong preference expressed in *Dowell* and *Freeman* v. *Pitts*, *supra*, for termination of federal court oversight once prior constitutional violations have been remedied. In *Dowell*, for example, the Court held that dissolution of a desegregation order is required once a school board has shown that it "[i]s being operated in compliance with the * * * Fourteenth Amendment, and that it [i]s unlikely that the school board would return to its former ways." 111 S. Ct. at 636-637. The Court explained that "federal supervision of local school systems was intended as a temporary measure to remedy past discrimination," and thus that desegregation decrees, unlike the decree in *Swift*, "are not intended to operate in perpetuity." *Id.* at 637. The Court further stated:

> The legal justification for displacement of local authority by an injunctive decree in a school desegregation case is a violation of the Constitution by the local authorities. Dissolving a desegregation decree after the legal authorities have operated in compliance with it for a reasonable period of time properly recognizes that necessary concern for the important values of local control of public school systems dictates that a

> federal court's regulatory control of such systems not extend beyond the time required to remedy the effects of past intentional discrimination.

Ibid. (internal quotation marks omitted).

Similarly, in *Freeman* v. *Pitts*, the Court held that "federal courts have the authority to relinquish supervision and control of school districts in incremental stages, before full compliance has been achieved in every area of school operations." 112 S. Ct. at 1445. The Court reiterated that federal judicial supervision of local school systems was intended as a temporary measure, and that "[r]eturning schools to the control of local authorities at the earliest practicable date is essential to restore their true accountability in our governmental system." *Ibid.*

It follows that the court of appeals' decision is consistent with *Dowell* and *Freeman*.[3] Although the court stated that the finding of unitary status "implicitly" (or "[b]y operation of law") dissolved the prior court orders, it did not reach that conclusion,

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[3] The court of appeals' decision is also consistent with decisions in other circuits. See, *e.g.*, *United States* v. *Overton*, 834 F.2d 1171, 1177 (5th Cir. 1987) ("the idea that a school district can be declared unitary and yet be answerable to the federal courts for failure to abide by desegregation plans, regardless of segregative purpose, is at war with itself"); *Morgan* v. *Nucci*, 831 F.2d 313, 318 (1st Cir. 1987) ("the one thing about unitariness is its consequences: the mandatory devolution of power to local authorities"); *Riddick* v. *School Bd.*, 784 F.2d 521, 535, 539 (4th Cir.), cert. denied, 479 U.S. 938 (1986) ("once the goal of a unitary school system is achieved, the district court's role ends"; following a finding that the school system is unitary "control of the system must be allowed to return to local officials").

as petitioners contend, solely by relying on the district court's use of the term "unitary status." Rather, the court of appeals found that the prior court orders had been dissolved because it correctly recognized, in keeping with *Dowell* and *Freeman*, that the purpose of a school desegregation case is the disestablishment of a dual school system, and that "[w]hen local school authorities demonstrate that they have complied in good faith with the district court's desegregation decree and that the vestiges of their prior illegal racial discrimination have been eliminated to the extent practicable * * * the court should and must return control over their school system to the local school authorities." Pet. App. 7a.[4] The court of appeals' fact-bound conclusion that the standards of *Dowell* and *Freeman* had been met in this case does not warrant further review.[5]

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[4] To be sure, it would be preferable for district courts after *Dowell* explicitly to vacate previous court orders if they are dismissing the case and terminating their jurisdiction. But a court's failure to do so cannot, consistent with *Dowell* and *Freeman*, extend the life of those orders if, as in the instant case, the constitutional violations have been cured and the court otherwise makes clear that the litigation has been terminated.

[5] Petitioners also assert (Pet. 14-15) that this Court should grant certiorari because the court of appeals' ruling will affect numerous desegregation cases that remain pending in district courts within the Eleventh Circuit. Because the court of appeals' decision is correct and involves only the application of settled legal principles to the facts of this case, petitioners' argument is insubstantial.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JANUARY 1993

☆ U. S. GOVERNMENT PRINTING OFFICE: 1993 342479 60139